

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4372 of 88

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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ARVIND G. SHAH ..Pet.(s)

Versus

COMPETENT AUTHORITY & DY. COLLECTOR (ULC) ..Resp.(s)

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Appearance:

Shri J.R. NANAVATY, Advocate, for the Petitioner.

Shri A.G.URAIZEE, Assistant Government Pleader, for the  
Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot  
(respondent No.1 herein) on 4th November 1987 under section 21

(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 25th April 1988 in Appeal No.Rajkot-94 of 1985 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission granted in favour of the petitioner under section 21 (1) of the Act by the order passed on 11th April 1980.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round two parcels of land bearing plot No.54 (Part) from survey No.123/124 (Part) situated in village Raiya and Plot No.29 from survey No.9 (new survey No.55) (Part) situated in village Madhapar in all admeasuring 946.49 square metres within the urban agglomeration of Rajkot (the disputed lands for convenience). The petitioner applied for a permission under section 21 of the Act. Such permission came to be granted by the order passed by respondent No.1 on 11th April 1980 on certain terms and conditions. Its copy together with the schedule appended thereto is at Annexure-A to this petition. One of the conditions attached to the permission at Annexure-A to the petition was to the effect that the construction work was to be completed and the necessary completion certificate was to be obtained within five years from the date of its order. The petitioner was thus required to complete the construction work and to obtain the completion certificate by 10th April 1985. It appears that the petitioner could not fulfil that condition. Thereupon, a show cause notice came to be issued on 17th April 1985 under section 21 (2) of the Act calling upon the petitioner to show cause why the permission granted by the order at Annexure-A to this petition should not be cancelled. A copy of the show cause notice is at Annexure-B to this petition. It appears that the petitioner thereafter approached the State Government with the application of 24th June 1985 for extension of the time-limit for completion of the Scheme approved by the order at Annexure-A to this petition. A copy of the aforesaid application is at Annexure-C to this petition. It appears that the petitioner also caused his reply on 25th June 1985 to the show cause notice at Annexure-B to this petition. A copy of the petitioner's reply is at Annexure-D to this petition. Thereafter, by the order passed on 4th November 1987 under section 21 (2) of the Act, respondent No.1 cancelled the permission granted by the order at Annexure-A to this petition. A copy of the aforesaid order passed on 4th November 1987 is at Annexure-F to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 of the Act. A copy of the memo of appeal is at Annexure-G to this petition. It came to

be registered as Appeal No.Rajkot-84 of 1985. By the order passed on 25th April 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-H to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-F to this petition as affirmed in appeal by the appellate order at Annexure-H to this petition.

3. It transpires from the order at Annexure-A to this petition that the permission under section 21 (1) of the Act was granted for construction of six residential units for the weaker sections of the society. It is not in dispute that the petitioner has completed construction of four such units in one of the disputed lands situated at village Raiya within the urban agglomeration of Rajkot. It appears that the petitioner was required to raise two residential units pursuant to the order at Annexure-A to this petition on plot No.29 situated at Madhapar. He has given several reasons for his inability to complete the construction in that land.

4. It transpires from the order at Annexure-A to this petition that one of the conditions included starting of the construction work within one year from the date of the order under intimation inter alia to respondent No.1. It appears that the petitioner did not start any construction work within the stipulated time-limit of one year. It transpires from the material on record that thereupon a show cause notice came to be issued on 15th September 1981 under section 21 (2) of the Act calling upon the petitioner to show cause why the permission granted by the order at Annexure-A to this petition should not be cancelled. Later on, by the order passed on 8th December 1983, respondent No.1 withdrew the said show cause notice. It cannot be gainsaid that the petitioner could not have undertaken any construction work in view of the show cause notice under section 21 (2) of the Act issued to him on 15th September 1981. As pointed out hereinabove, that notice came to be revoked nearly two years and three months thereafter on 8th December 1983. In that view of the matter, delay on the part of the petitioner in completing the Scheme within the stipulated period of five years cannot be said to be wholly unjustified. In fact, the intervening period between the show cause notice issued on 15th September 1981 under section 21 (2) of the Act and its revocation by the order of 8th December 1983 ought to have been excluded from the time-limit of five years.

5. However, the fact remains that the construction work could not be completed within the stipulated time-limit of five years and it appears that the petitioner agreed to complete it within the stipulated time-limit of five years and

thereupon the show cause notice came to be issued by the order passed on 8th December 1983.

6. In this connection, a reference deserves to be made to the ruling of this court in the case of GOVINDLAL CHUNILAL DALVADI v. STATE OF GUJARAT reported in 1994 (1) Gujarat Current Decisions at page 526. It has been held therein that condonation of delay in completion of the Scheme can be made by imposition of a reasonable penalty on the landholder if delay was found to be not on unjustifiable grounds. In that view of the matter, in this case also, delay in completion of the Scheme is required to be condoned as it is not found to be on unjustifiable grounds.

7. The question then would arise as to what penalty should be imposed on the petitioner for condonation of delay. I think it would be in the fitness of things to ask the petitioner to pay 10% of the price of the residential unit fixed under the Scheme approved by the order at Annexure-A to this petition. The overall price of the residential unit thereunder was fixed at Rs.25,000/-. Its 10% would come to Rs.2500/- as rounded off. Since the petitioner has not completed the construction work with respect to only two residential units within the stipulated time-limit of five years, the petitioner should be directed to pay the penalty of Rs.5000/- for condonation of delay.

8. The petitioner could not complete the construction work during the pendency of this petition. It would therefore be in the interest of justice to direct the petitioner to complete the construction work within two years from today on condition that no extension thereof will now be granted.

8. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 4th November 1987 under section 21 (2) of the Act at Annexure-F to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 25th April 1987 in Appeal No.Rajkot-94 of 1985 at Annexure-H to this petition is quashed and set aside on condition that the petitioner makes within one month from today payment of Rs.5000/- by way of penalty to respondent No.1 by means of an account payee cheque drawn in the name of respondent No.1. The petitioner is ordered to complete the construction work in plot No.29 situated at Madhapar within the urban agglomeration of Rajkot within two years from today. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

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